

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**PAKENAUTH GEER,**

**Plaintiff,**

**v.**

**9:14-CV-261**

**ST. MAIL CLERK WHORF, et al.,**

**Defendants.**

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**DECISION & ORDER**

Thomas J. McAvoy, Senior District Judge.

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983 was referred to the Honorable David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, dated September 5, 2014, Magistrate Judge Peebles recommends that Plaintiff's motion to proceed *in forma pauperis* be granted and that his claim be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim upon which relief could be granted. Magistrate Judge Peebles recommends, however, that the Complaint be dismissed without prejudice and Plaintiff permitted to file an amended complaint that replaces the earlier action.

Plaintiff did not file any objections to the Report-Recommendation. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

It is therefore ordered that:

(1) The Report-Recommendation is hereby ADOPTED;

(2) Plaintiff's motion to proceed *in forma pauperis*, dkt. # 10, is hereby **GRANTED**;

(3) Plaintiff's Complaint is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim upon which relief may be granted;

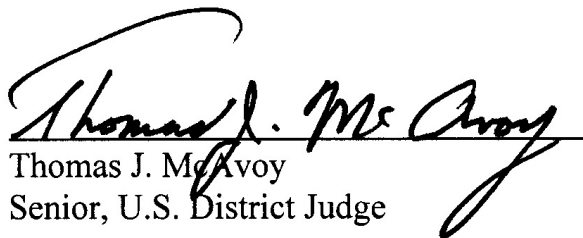
(4) Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**; and

(5) Plaintiff may file an Amended Complaint within 21 days of the date of this Order.

The Amended Complaint should set forth in a short and plain statement the facts upon which Plaintiff relies to support his claim that the individuals named as defendants engaged in misconduct or wrongdoing that violated Plaintiff's constitutional rights. Plaintiff should be aware that any amended complaint completely replaces the Complaint previously filed. Plaintiff may not incorporate any of the allegations in the previous Complaint in his amended complaint by reference.

**IT IS SO ORDERED.**

Dated: October 1, 2014

  
Thomas J. McAvoy  
Senior, U.S. District Judge